Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

BLANCHE HUTCHERSON,

Petitioner,

vs.

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF HUMAN RESOURCES,

Respondent,

Petition For Writ Of Certiorari To The United States Court of Appeals For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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4819

QUESTIONS PRESENTED

Petitioner was born 5/29/36, and was employed from 4/16/62 to 12/31/92 by The New York City, New York City Department of Human Resources. In 1989 and 1992 was brought up on disciplinary charges on false allegations by respondent. Petitioner's Constitutional Rights To Due Process Were Violated.

Whether Petitioner's Constitutional rights to due process to a fair trial were violated when the lower court's decision that a jury would not find proof of age discrimination?

Whether Petitioner's constitutional rights to due process were violated by the Second Circuit's affirmance of the district court's decision, and to deny a rehearing?

Whether Age Discrimination existed when Petitioner was forced out of her job at the time the city was giving an Early Retirement Package to city employees in 1992 by top adminstrators?

Whether age discrimination existed when the Respondent acted simultaneous with petitioner's subordinates when they stated "Why don't you retire" "We have to get rid of Ms. Hutcherson" "When are you going to retire"?

Whether the younger employee age 31 who replaced Petitioner is proof of age discrimination?

Whether Petitioner's constitutional Rights To Due Process were violated when the lower court denied promotion to be part of the complaint in this case?

Whether Petitioner's constituted rights to due process were violated when the city failed to produce two of the seventeen memorandoms to her in district courts?

Whether Petitioner's constitutional rights to due process were violated when the respondent failed to discuss seventeen memorandums in her personnel folder with her?

Whether Petitioner's constitutional rights to due process were violated when the city failed to discuss seventeen memorandums with her and finding her guilty of all charges?

Whether Petitioner's constitutional rights to due process were violated when respondent altered several depositions?

Whether Petitioner's constitutional rights to untainted memorandums were violated by the presentation of false and misleading statements by respondent?

Whether Disparate Treatment includes showing less favor to an employee ages 52 and 561/2 respectively by disciplining her without good cause prove age discrimination?

Whether respondent discriminated, and retaliated against petitioner because she filed complaints with EEOC in December, 1987 and April, 1989?

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Petitioner Blanche Hutcherson, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the second Circuit denying Petitioner's application for rehearing consideration and affirming the opinion for dismissal of her case by the district court.

OPINIONS BELOW

The court of appeals affirmed the judgment of dismissal of case by memorandum opinion entered on September 24, 1998 *(4A) and it denied Petitioner's application for a by opinion on April 9, 1999. Reason "lacking in merit as to be frivolous within the meaning of 28 U.S.C. 1915 (e), Neitzke v. Williams, 490 U.S. 319 (1989)".

STATEMENT OF JURISDICTION

Petitioner was originally a plaintiff in a civil action brought in the United States District Court for the District of New York. The district court had subject matter jurisdiction pursuant to 18 U.S.C. 3231. The opinion to dismissal of case was entered September 24, 1998 and was docked on September 30, 1998. A timely appeal was filed with the United States Court of Appeals for the Second Circuit, which had appellate jurisdiction to review the judgment of the district court pursuant to 28 U.S.C. 1291. A memorandum opinion and judgment order affirming the judgment of dismissal of case was entered by the Second Circuit on April 9, 1999 (4A).

Petitioner seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit. This Court has jurisdiction to review the judgment below pursuant to 28 U.S.C. 1254 (1).

CONSTITUTIONAL PROVISION

The Fifth Amendment to the United States Constitution and Petitioner's constitutional right to due process are pertinent to this case.

1. The notation "a" refers to the appendix annexed to this petition.

STATEMENT OF THE CASE

On April 9, 1999 The United States Court of Appeal Second Circuit denied Petitioner's request for a rehearing stating lack of merit in case. Petitioner requested an appeal because of the misconduct by the respondent's false allegations that had gone uncorrected of heard. Petitioner's constitutional rights to due process were violated. The United District Court Judge alleged Petitioner had not proved age discrimination and a jury would not find guilty of same. On September 24, 1998 the district court filed an opinion denying Petitioner a trial by jury, and dismissed the case.

In Napue v. Illinois 360 U.S. 264 (1959) this Court held that due process is violated when false evidence is allowed to go uncorrected and court decision are made. False testimony violates due process, was affirmed in Giglio v. United States, 405 U.S. 150 (1972), and again in Untied States v. Bagley, 473 U.S. 667 (1985).

Petitioner was 56 1/2 years old in December, 1992, had a good work record, numerous superior evaluations, and an outstanding evaluation, commendations from prior administrators, Commendations from prior administrators, a commendation in 1990 from the commissioner of the department, and had worked 26 years in the department with no problems. There was disparate treatment by respondent against her for several years by administrators under James Pyatt, Director, Field Manager, and later Assistant Deputy Commissioner. One commendation requested that she be promoted in 1987, but she was denied the opportunity. For March 1981 to December, 1992 she was denied an opportunity. The city favored younger, less experience, and less qualified employees. Bruce Bishop, age 31, replaced Petitioner after she was forced out of her career in 1992.

The New York City, New York City Department of Human Resources tolerated the existence of an intensely hostile environment in 1992 against Petitioner. Petitioner's complaints were disregarded by the respondent. Petitioner filed a lawsuit, and a Default Judgment was issued for damages and lost income on March 22, 1996.

NOTE: New York Divisions of Human Rights held petitioner's complaint from 12/92 to 6/95.

Director Beverly Moran made false statements during her deposition stating she had conferences with petitioner about the memorandums. The fact none of the seventeen memorandums were discussed. Two of the seventeen memorandums were never submitted to her when requested from respondent during the deposition process. She lied stating petitioner's subordinates were doing their work. She socialized during working hours with the subordinate in the presence of petitioner. She had one writing a memorandum to her making false statements. She had one subordinate (pure provisional never passed a civil service test) in her office for a week failing to inform petitioner, leaving 175 clients without the service of a worker. Petitioner didn't know where the worker was. She had to ask employees from other groups to help in emergency situations. She pulled another subordinate out her unit for a month without informing her. Again 175 clients were without the service of a worker. Petitioner had to ask employees from other units to take care of emergencies.

On Good Friday in 1992 Beverly Moran forced Petitioner to work all day alone in nine units. She allowed eight supervisors, two assistants to the office manger, and she took the day off. She executed an extreme negative attitude against Petitioner. Some of the administrators wrote false allegations in the 17 memorandums against her to bring disciplinary charges against her.

The Assistant Office Manager Deborah Kellman stated she would beat petitioner up outside the Yorkville Center after 5PM in the presence of Beverly Moran. Moran did nothing to bring disciplinary charge against Kellman. They knew each other prior to her coming into the Yorkville Center. Beverly Moran forced Petitioner to come into her office without her union representative when she was entitled. Petitioner's constitutional rights were violated. Marie Martinez threaten to beat her up, knock her false teeth out, and drag her out of the office. Again Beverly Moran failed to bring disciplinary charge against her. She stated later Petitioner "hit her". Beverly Moran used her statement to bring disciplinary charges against petitioner without discussing anything with her. In fact she failed to discuss any of the 17 memorandums she collected from the office manager and other employees with petitioner. Petitioner's Constitutional Rights To Due Process were violated. She had no record of where Martinez was hit on

her body, where incident took place, and any witness. The fact, no incident took place. This was an outright fabricated lie by Martinez. Petitioner was approached in July, 1991 by an assistance to the office manager with 7 or 8 inch butcher knife. She was working signing off cases as the employee came to her desk, knocked over a pile of cases on her desk, stabbed his knife into the cases while staring her in the eyes. Lorraine Darden didn't see a reason to file disciplinary charges against this worker. Beverly Moran didn't see a need to bring disciplinary charges. In fact, Office Manager Lorraine Darden came on the floor, put her arms around the employee's waist with the knife, and went off the floor laughing. Beverly Moran stated to petitioner "I will bring disciplinary charges again if a worker comes into my office and complains about you". I will do it as often as I have to. Petitioner's subordinates misconduct was supported by the administrators.

The City of New York, New York City Department of Human Resources sent a statement to the State of New York Executive Department, Division of Human Rights on June 9, 1993. The Respondent lied stating "On December 30, 1990 the complainant (Petitioner) was promoted to the civil service title, Principal Administrative Associate (PAA), Leve I and assigned to Respondent's ISC No. 19. This is an outright fabricated lie. The fact petitioner was promoted to this title in March 30, 1981. More false lies that Petitioner's job performance was not always satisfactory. Petitioner never received an unsatisfactory performance. In 1992 Beverly Moran forced Petitioner to cover 9 groups alone all day on Good Friday. She stated Petitioner was found guilty on at least two occasions during the period 1989 and October 1992.

The fact in 1989 the Field manager James Pyatt's girlfriend, Victoria Pitchford, who he had handed a promotion with 6 years only in the department to assistance office manager. She submitted false allegations and charges for disciplinary action against Petitioner stating she was her supervisor, and that she stated she would kick somebody's ass. It was Pitchford who threaten to fight petitioner in the office and another employee had to hold her back. James Pyatt had an extreme negative attitude towards Petitioner and would use his administrators to do his dirty work. Respondent failed to prove in the district court with one original document that Victoria Pitchford was ever petitioner's

supervisor. This is another outright fabricated lie. She never ever was her supervisor. It was Victoria Pitchford who came two feet from Petitioner's desk, turned up her rear and with a thin dress on showing her brief underpants. James Pyatt was standing in the aisle approximately 12 feet away with his arms folded across his chest watching her. On one occasion Petitioner was going to the elevator in the Waverly Center, and Pitchford stood at the door of the elevator, James Pyatt was inside the elevator. When Petitioner arrived at the elevator James Pyatt ran out. She went back to another supervisor in the center and told her what she had seen. The supervisor stated to her "Everybody knows about th :".

Assistant Deputy Commissioner James Pyatt used one of his personal friends who he handed a promotion to assistant office manger in the Yorkville Center (Deborah Kellman) to file false allegations against petitioner in 1992. She stated that Gale Godwin prior director before Beverly Moran had a conference with petitioner and stated she was going to bring her up on disciplinary charges. Gale Godwin denied at her deposition she made statement to Kellman. Fact, she never made statement to petitioner.

More lies from Deborah Kellman. She stated petitioner came into her office and knocked all the papers off her desk. She submitted a memorandum with this information for disciplinary charges that was never discussed with petitioner. Petitioner's Constitutional Rights To Due Process Were Violated. She caused two employees to fight in the office, and they ended up in Bellevue Hospital emergency room. Lorraine Darden or Deborah Kellman took no action to bring them on disciplinary charges.

> On November 5, 1992 and November 9, 1992 Petitioner wrote up two employees who were under her supervision for insubordination, and was threatened by Beverly Moran. She stated if another employee came into her office to complain about her, she could lose her job, pension or could be suspended without pay.

Beverly Moran denied making the above statement in the

memorandum to the Human Rights Division, but on 3/26/97 at her deposition she admitted charges. She is not a credible administrator. She knew Petitioner less than a year. She was in the department approximately 14 years in 1992 with less experience and less qualifications.

Respondent lied more stating Petitioner wrote up Mona Clark. This employee was never supervised by her, and she never wrote her up. She continued to lie stating the workers reported that petitioner was disrespectful, unprofessional, and verbally abusive in her relationships with staff. Petitioner's subordinates can't speak for approximately 200 staff member. Petitioner got along with staff members. It was Petitioner's subordinates and some administrators who were disrespectful, unprofessional, and verbally abusive in their relationship to petitioner. In fact they showed barbaric behavior. The Petitioner got along with staff for 26 years in the department. The 17 memorandums were written by the subordinates and some administrators ages 27, 31 35 and 39. In 1992 James Pyatt was age 50, with 28 years in the city, Beverly Moran age 53, 14 years , Loraine Darden age 46, 20 years, Deborah Kellman age 40, 19 years, Sally Rodriguez age 32, 8 years only, and Petitioner age 56 1/2 approximately 30 years with the city.

Petitioner transferred to the Yorkville Center in December 1990. Gale Godwin, Director. Memorandums were written by petitioner's subordinates, and her immediate supervisor that were never seen or discussed with her. Petitioner's Rights To Due Process Were Violated. Gale Godwin was transferred out of the Yorkville Center in 1992. James Pyatt assigned Beverly Moran as director of the center.

James Pyatt had been the director of the Waverly Center where Petitioner had been a supervisor. He became field manager, and later assigned to assistant deputy commissioner. In the Waverly Center he came to petitioner's cubicle with a supervisor. The supervisor stated "Any one 51 years of age should go home". James Pyatt stated to her in the Waverly Center "You will never be promoted". Petitioner's Constitutional Rights Were Violated. All employees should be given an opportunity equally. Petitioner continued to receive barbaric negative treatment under his power, and control. After he assigned Beverly Moran to the Yorkville it got worse.

Beverly Moran exhibited an extreme negative attitude towards Petitioner. She began yelling at her in front of her subordinates. She failed to explain to her why she made the statements "You can lose you job, be suspended, or lose your pension". Petitioner never knew why she was called into her office.

Office Manager Loraine Darden collected from petitioner's subordinates, Sally Rodriguez and Deborah Kellman, assistants to the office manger approximately 9 memorandums in two months (June and July, 1992) making false and misleading statements about petitioner. They failed to discuss the memorandums with her. Petitioner's Constitutional Rights To Due Process Were Violated. Lorraine Darden gave these memorandums to Beverly Moran to file disciplinary charges against petitioner. Again Petitioner's Constitutional Rights To Due Process Were Violated. Beverly Moran sent 17 memorandums (some supposedly had been written prior to her coming to the center that she knew nothing about). She failed again to discuss memorandums with petitioner. She filed the memorandums for disciplinary charges in September, 1992 while petitioner was on vacation. The City of New York, New York City Department of Human Resources failed to discuss the 17 memorandums with her before finding her guilty of all charges. Petitioner's Constitutional Rights To Due Process were violated again.

In June, 1995 a meeting was held at the Human Rights Division, 55 West 125th Street, New York, New York 10037. Present were a Human Rights representative for petitioner, who had never spoken to her about her case, Beverly Moran, Sally Rodriquez, Chuck Waxman, head of the New York City Department of Human Resources, and another lady in a red coat. No one introduced themselves at the meeting. Petitioner had to ask her representative who was holding her case who he was at the meeting. Petitioner was asked to state her case. She stated that she didn't know why disciplinary charges were brought against her. Petitioner's representative left the meeting, and returned with several papers, placed the papers in front of her. She looked down and began to pick up the papers. When she raised her head up, all of the above administrations in the meeting were gone leaving petitioner alone with her witness. This was the first petitioner had seen any of the memorandums that had been written by Sally Rodriguez (very vicious

memorandum). She stated what one of her subordinates had told her about petitioner. This subordinate never passed a civil service test, and was a pure provisional that would sit at her desk from 8AM to 10AM eating her breakfast, and failing to work on her emergency days in emergencies. Sally Rodriguez had a close relationship with James Pyatt, and he handed her a promotion to an administrator with only 4 years in the department at age 28. Sally Rodriguez abused her power by presenting false and misleading statements in her memorandum. She stated to Petitioner "You will always be a supervisor". This is an Age Based Remark as evidence of age discrimination. The attitude of Sally Rodriguez, and petitioner's subordinated were barbaric. They were extremely rude to petitioner and management tolerated it. One of petitioner's subordinates Valerie Saunder came to her desk and yelled to the top of her voice about petitioner, and could be heard all over the floor. Sally Rodriguez, Deborah Kellman, Lorriane Darden, and Beverly Moran closed their doors. It was a lady from the control section who came and pulled her out of the unit. The subordinate yelled approximately 15 minutes. Sally Rodriguez came to petitioner's unit and laughed with her subordinates during working hours. She failed to write Maria Martinez up, and she was a big trouble maker in the unit. They were extremely rude to petitioner in 1992, and the administrators who wrote the memorandum were laughing at petitioner.

Petitioner worked 26 years in the department and never had a problem working with staff and administrators. She filed a lawsuit with the Federal District Court on age discrimination through EEOC. The case was filed within the 90 days. In Trans World AirLines, Inc. v. Thurston (469 US 111 (1985) an employer's conduct is willful, if it knows or shows reckless disregard for whether its conduct is prohibited by the ADEA. (ID at 128) Phonographic pictures of males and female private part were placed in front of Petitioner's face while she worked at her desk in the Waverly Center when James Pyatt was the director. Her immediate supervisor laughed at this action.

Petitioner's barbaric treatment by the respondent in 1992 were intentional acts. The City of New York, New York City Department of Human Resources was offering an early retirement package to city employees. The petitioner was stigmatized by the respondent's character assassination, false allegation, age discrimination, and was forced out of

her career. She found out that a younger employee age 31 replaced her.

In November, 1992 Beverly Moran stated to petitioner "I will bring disciplinary charges again if an employees comes into my office and complains to me about you." She stated "I will do it as often as I have to." She was seen frequently on the floor in the presence of petitioner socializing with her subordinates during working hours. She became extremely vicious towards her.

Respondent's personnel administrators placed memorandums in petitioner's personnel folder without discussing them with her. The Fifth Amendment to the United States Constitution and Petitioner's constitutional right to due process are pertinent to this case. One note in her folder stated "Is Ms. Hutcherson A Nut ?" Someone was speaking to Beverly Moran. No date or signature on this memorandum. It was submitted in the district court. The respondent failed to let petitioner see her personnel folder during the deposition process, but made copies from her folder, and had them hand delivered to her.

Lorraine Darden, Office Manager denied Petitioner the right to serve on jury. In fact twice she denied the right to serve on jury. The first time this happen to her in the department. Deborah Kellman assistant to the office manager stated if she took time off for jury duty it would be reflected in her evaluation. Lorraine Darden lied in her memorandums stating petitioner came into her office and banged on her desk in a meeting. She failed to bring an administrator up on disciplinary charges who came to petitioner's desk with a 7 or 8 inch butcher knife. She had one of petitioner's subordinate constantly in her office during working hours, and petitioner could not get overdue work completed from this worker. The subordinate became a big trouble maker. She left the telephone on the floor, and became angry with petitioner when she asked her to place phone on her desk. She came to petitioner's desk pointing her finger in her face stating " I will knock your false teeth out, beat you up and drag you out of the office." Beverly Moran, Sally Rodriguez, and Lorraine Darden failed to write her up or bring disciplinary charges against her. They allowed their close friends in the Yorkville Center to get away with everything.

The case went to the United States District court in 1995 to

U.S.D.J. Miriam Goldman Cedarbaum. On 2/12/95 Leonard Bernikow, United States Magistrates Judge was assigned to preside over the deposition process. Petitioner requested a lawyer, but was unsuccessful.

Petitioner interviewed eleven ligigants, one was her witness a clerk. All the other litigants were administrators. James Pyatt, Asst. Deputy Commissioner, Harold Geneen, Field Manager, Gale Godwin, Beverly Moran, directors, Lorraine Darden, Sharyn Brown, Victoria Pitchford, officers managers, Deborah Kellamn, Sally Rodriguez, Lindsay Watson, assistant to the office manager, and Hassan Abdul Hamid, clerk and petitioner's witness. The depositions took place at 500 Pearl Street beginning 2/27/97, and ending 6/8/97. Three administrators had to be supoenaed, Beverly Moran, Sally Rodriguez, and James Pyatt. James Pyatt had to be subpoenaed twice before his appearance at his deposition. Leonard Bernikow, United States Magistrate Judge was informed by petitioner that the respondent altered approximately eight depositions out of twelve. He warned petitioner that she would be at a disadvantage in a conference if she didn't have a lawyer. At the end of that deposition process the judge wrote an opinion. The case went to U.S.D. J. Miriam Goldman Cedarbaum's chamber. The petitioner and respondent had an appointment in her chamber, but the counsel handling the case for the city didn't show up, but sent another lawyer in his place. Questions were asked by the judge that this lawyer couldn't answer. The judge decided that case would be handled in writing.

The respondent wanted to dismiss the case, but the judge wrote an opinion to continue dated August 14, 1996. Paul A. Crotty, Corporation counsel of the City of New York, Attorney for Defendant, 100 Church Street, New York, New York 10007, and James A. Girillo, Assistant Corporation Counsel were assigned to the case. Paul A. Crotty, Corporation Counsel left the city, and Jefferey D. Friedlander, Acting Corporation Counsel of the City of New York, Attorney for the City of New York, New York, 100 Church Street. Rm, 2-155, New York, New York 10001 took his place.

Petitioner was asked to transfer out of the Yorkville Center in 1991 by Gale Godwin, director, with no explanation for her request. She had transferred from the Waverly Center to the Yorkville center in December, 1990 to get away from James Pyatt. It was when petitioner

saw James Pyatt in the Yorkville center that she was asked to leave. He brought Sally Rodriguez into the Yorkville Center and placed her over petitioner as her immediate supervisor. She was 32 years of age and 8 years only in the department. She was a personal friend of James Pyatt. James Pyatt handed out numerous promotion to younger employee, and placed them over petitioner. In fact, Lindsay Watson couldn't perform her duties at a supervisor's level. At the end of each month her work had to be distributed to other supervisors to be completed. She was handed a promotion to an administrator and placed over petitioner. She was age 32 and petitioner age 51. She could not obtain an associate degree in 4 or 5 years. Petitioner went to school at night while working and earned a BBA from Baruch College in 6 years, graduating cum laude, and clearly able to do the job was denied a promotion. In fact respondent failed to post a position was open in the center. Documentations were submitted verifying outstanding, superior evaluations, numerous commendations from administration. The New York City Department of Human Resources Commissioner gave her a commendation in 1990. He left the department in 1991.

Petitioner was forced out of her career by the actions of Beverly Moran, Director, and James Pyatt. Asst. Deputy Commissioner in 1992 when the department was offering an Early Retirement Package to city employees. There was severe pervasive barbaric negative actionduring 1992 toward petitioner. Their action was wilful age discrimination. In the disciplinary charges brought by Beverly Moran submitting 17 memorandums without discussing them with her. Petitioner's Constitution Rights To Due Process were violated. James Pyatt's attacks against petitioner from his girl friends and personal friends he handed promotions to as administrators prove age discrimination. Replacing a younger employee age 31 to replace her proves age discrimination existed. See Age Discrimination in employment act of 1967; Disparate Treatment; Griggs v. Duke Power Co. 401 U.S. 424 (1971). Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000et. Seq.) Petitioner was told by some of her subordinates in the Yorkville "We have to get rid of Ms. Hutcherson". "When are you going to retire", and "you know you can retire." These statements were made numerous times in 1992. The administrative staff was taking action simultaneous with the petitioner's subordinates statements.

Petitioner worked approximately thirty years, and never received one meritorious increase, but saw younger employees receive same. Some younger employee received meritorious increases frequently. The respondent took action with disregard for petitioners's long service, and her emotional investment in her job. Other employees were not treated this way. Age discrimination played a role in respondent's barbaric, negative, and bias action against petitioner in 1992. The petitioner's conduct was good. It was the misconduct of some "of the administrative staff, and the subordinates" who acted in a barbaric negative manner against her. The respondent proffered reasons are pretextual. The respondent cannot use conduct and work performance as a reason for Beverly Moran's action. Their misbehavior cannot be ignored by the respondent.

Petitioner's brother died in February, 1992. No collection was taken up, but every time some one's relative in the office died. They came to petitioner for money . She gave a dollar each time. The supervisor who sat directly in front of her, turned around, looked in her eyes and stated for over two weeks "Did your brother really die"? The supervisor was Mr. Freidman who laughed while making the statement.

Deborah Kellman had subordinates of petitioner in her office when she wasn't her immediate supervisor. She had them writing memorandums to her about petitioner. She had two employees fighting in the office, and they ended up in Bellevue Hospital Emergency room for treatment. The employees fighting were young Spanish employees. Lorraine Darden, office manager failed to write them up or bring disciplinary charges against them. Petitioner's subordinates would be yelling all over the floor during working hours laughing. Sally Rodriguez, Deborah Kellman, Lorraine Darden, and Beverly Moran closed their doors and did nothing. Petitioner had not been allowed to carry out her job properly for over two years and could not continue to endure the abuse. The respondent was not correcting the misconduct. There are no proven deficiences in the performance or conduct of petitioner. Only outright fabricated lies by administrators that James Pyatt had handed promotion who were his girlfriends, close personal friends, and their friends. Petitioner had worked 26 years for the department before James Pyatt's women began to attack her and fabricate lies.

James Pyatt began to state petitioner doesn't get along with anyone. Petitioner doesn't get along with anyone. Petitioner worked 26 years in the department and no one made such a negative statement about her.

Petitioner had experience accumulated with age and should have benefited from increased pay for greater seniority. Formal education should have been counted. The Respondent knew of the misconduct by his administrators, and showed reckless disregard for the matter and allowed it to go on. Their acts were intentional. Documents were submitted to show respondent brought petitioner up on disciplinary charges in 1989, and 1992 on false allegations. This did not happen to other employee in the department. Petitioner had the ability to do the job, respondent's misconduct was wilful and reckless with disregard for petitioner age 56 1/2. Petitioner's Consitutional Rights To Due Process Were Violated on numerous occasions.

Beverly Moran, Director, Lorraine Darden, Office Manager, Deborah Kellman, and Sally Rodriguez, assistants to the office manager aided peitioners subordinates to write the memorandums with false misleading statements. Subordinates were seen in their offices by petitioners during working hours, when they ha d outstanding overdue work to be completed. In fact, Deborah Kellman had petitioner's subordinates in her office when she wasn't petitioner's immediate supervisor and had Valerie Saunders write a memorandum about petitioners addressed to her.

Beverly Moran had one of petitioner's subordinates in her office for a week, failing to inform petitioner, and leaving 175 clients without the service of a worker. Moran had this worker write a memoradum against petitioner addressed to her.

Sally Rodriguez allowed a male employee that petitioner didn't know sit in petitioner's unit over three months playing with the females in petitioner's unit. Rodriguez failed to explain to Petitioner why he sat in her unit. Petitioner had trouble with her subordinates because of this situation.

Lorraine Darden had petitioner's subordinates running in her office all during working hours and petitioner had trouble getting much work out of her subordinates. Petitioner's subordinates got vicious when petitioner asked them for overdue work. They weren't meeting their

dealines, but yelling and laughing all over the floor with Sally Rodriguez, Deborah Kellaan, Lorraine Darden, and Beverly Moran. Clients were calling on the telephone and the workers weren't at their desk, but in the administrator's offices. Petitioner received numerous calls from clients complaining about petitioner's subordinates slamming the phone down on them when they called for service. Some of the clients were crying over the phone while speaking to petitioner. Petitioner subordinates were not doing their jobs.

Respondent has deemed the statements from Beverly Moran as material facts in this case. Moran's statements are basically a farce, Moran told one of petitioner's subordinates that she could take a half day off without informing petitioner. Moran collected 17 memorandums with unsubstantiated assumptions from her administrators and petitioner's subordinates without discussing them with petitioner before submitting them for disciplinary charges. Clearly, Petitioner's Rights To Due Process were violated. Moran failed to verify the truthfulness in the memorandums before submitting them for disciplinary charges, another farce.

Respondent has speculated that Moran has submitted genuine facts in this case. Another farce because Moran is not telling the whole truth in this case.

James Pyatt brought Beverly Moran into the Yorkville Center in 1992, and petitioner was forced out of her career by Moran at the age of 56 1/2 when The City of New York, New York City Department of Human Resources were offering a Retirement Package to city employees in December, 1992. Respondent has further speculated that Lorriane Darden, Office Manager, Deborah Kellman, Sally Rodriguez, Assistants to the office manager and Petitioner's subordinates have told the whole truth by merely submitting memorandums to Beverly Moran for disciplinary actions. Respondent failed to discuss the memorandums with petitoner before finding her guilty of all charges. Another farce in this case. Again Petitioner's Constitutional Rights to Due Process were violated.

Respondent lied by stating Beverly Moran, director, counseled petitioner. This Moran was incable of doing because she only yelled at petitioner in her office, and exhibited an extremely barbaric attitude

towards petitioners. The respondent does not believe that his administrators had any bad conduct. Respondent's conclusory belief that the memorandums told the whole thruth is a farce.

Moran failed to take disciplinary action against her administrators, and petitioner's subordinates. They were her friends. Petitioner saw Moran on the floor socializing with petitioner's subordinates during working hours when they were behind in their work, Deborah Kellman and Sally Rodriguez came on the floor in the presence of petitioner laughing with petitioner's subordinates again preventing subordinates from getting their overdue work done, and meeting necessary deadlines.

Darden, had Maria Martinez, petitioner's subordinate, in and out of her office daily during working hours. Maria Martinez became a big trouble maker in the unit. Martinez was the subordinate that stated to petitioner at petitoner's desk, "I will beat you up, knock out your false teeth and drag you out of the office." Martinez lied in her memorandum to Darden stating Petitioner hit her. Darden failed to discuss this memo with Petitioner before, giving it to Beverly Moran to submit for disciplinary charges. Petitioner's Consitutional Rights to Due Process again were violated. Petitioner received the disciplinary charges and Darden came to her desk laughing into petitioner's face, as well as Deborah Kellman, and Sally Rodriguez.

Respondent has aided and supported the actions of Ms. Moran's outright fabricated lies, her adminstrators, and petitioners subordinate without any substantiated facts. Petitioner was harassed by Moran's administrators and petitioner's subordinates until she clocked out on the last day of her employment with HRA. In fact Marie Martinez yelled out over the floor almost all day "Retirement Time" twenty-five or more times. Petitioner saw Deborah Kellman, Sally Rodriguez, Lorraine Darden laughing on the floor with petitioner's subordinate. Moran stated they were acting professional, and their conduct had improved. Another farce.

The respondent went to the extent to alter several depositions to submit a defense for Moran. Petitioner asked the Court Reporter at her deposition how long it would take to type. The court reporter stated "3

days." Petitioner waited approximately 1 1/2 to 2 months before petitioner recieved her deposition to review. Petitioner was shocked at what she was reading. Other depositions were held over a month, and Victoria Pitchford's deposition was never returned to petititoner by respondent.

Respondent alleges Moran counseled petitioner. The three times petitioner was in Beverly Moran's office. First time with Deborah Kellman. Petitioner has a memorandum to verify this meeting. Deborah Kellman stated in this meeting that she would beat up petitioner outside of the Yorkville Center after 5pm, and Moran did nothing. Second meeting Moran forced petitioner into her office when she requested her union representative that she was entitled. Petitioner's Constitutional Rights To Due Process again violated. At this meeting she yelled at petitioner in a barbaric manner stating that petitioner could lose her job, pension, or be suspended and lose pay. Moran failed to explain to petitioner why she was making these remarks. Petitioner left her office wondering what was going on in the office. Third time Moran handed petitioner the disciplinary charges the day petitioner returned from her vacation in September, 1992.

Respondent is speculating these were counseling sessions given by Moran (a farce). Moran had fabricated numerous lies against petitioner that she couldn't face petitioner, and stayed from work the week before petitioner left the Yorkville Center.

James Pyatt's power and control in the city department increased the burden on petitioner to defend herself against constant lies by administrators, and her subordinates. Petitioner never experienced this misconduct by prior administrators in 26 years with the city.

Petitioner requested from respondent the educational background of the administrators in the Yorkville Center in 1992, but was denied this information.

Respondent wilfully, maliciously, and deliberately entered upon a course of action designed with discriminatory purpose against petitioner on account of her age in 1992.

For all the foregoing reasons, the judgement of dismissal of case against Petitioner must be reversed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that this Court should grant petitioner's petition for issuance of a writ of certiorari.

Respectfully submitted:

BLANCHE HUTCHERSON, PRO SE
341 West 24th Street Apt. 4H
New York, New York 10011
(212) 691-4210

Appendix A -

MEMORANDUM OPINION OF THE UNITED SATES COURT OF APPEALS FOR THE SECOND CIRCUIT, APRIL 9, 1999

Filed

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
NO. 98-9404

BLANCHE HUTCHERSON

Appellant

vs.

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF HUMAN RESOURCES

Appellee

On appeal from the United Sates District Court for the District of New York,
District Judge: Honorable Miriam Goldman Cedarbaum

BEFORE: NEWMAN, LEVAL and SOTOMAYOR, Circuit Judges

(Filed: April 9, 1999)

Appendix A

Blanche Hutcherson
341 West 24th St.
Apt. #4H
New York, NY 10011

INDIV PROSE
SUBMTD CLOSED
PNL QO2 2

GENERAL DOCKET FOR:
Second Circuit Court of Appeals
Files 10/26/98
Court of Appeals Docket #: 98-9404
Nsuit: 3442 CIVIL RIGHTS-Job
Hutcherson
v.
The City of New York, et al
Appeal from: U.S. District Court SDNY

CASE TYPE INFORMATION:
1) Civil
2) Private
3) None

LOWER COURT INFORMATION:
District: 0280-01: 95-cv-10074
Trial Judge: Miriam Goldman Cedarbaum
Magistrated Judge: Leonard Bernikow
Date filed: 11/29/95
Date Order/Judgement: 9/29/98
Date NOA Filed: 10/5/98

FEE STATUS: Paid

PRIOR CASES: None

CURRENT CASES: None

PANEL ASSIGNMENT: Docket as of April 9, 1999 1:22pm *Page 1*

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

As a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the ninth day of April one thousand nine hundred and ninety-nine,

Present:

Hon. Jon. O. Newman,
Hon. Pierre N. Leval,
Hon. Sonia Sotomayor,
Circuit Judges.

98-9404

Blanche Hutcherson,

Plaintiff-Appellant

v.

The City of New York, New York City Department of Human Resources,

Defendent-Appellees.

Appendix A

A motion having been made herein by appellant pro se for assignment of counsel, upon consideration thereof, it is ordered that said motion be and it hereby is denied, and the appeal is dismissed as so indisputably lacking in merit as to be frivolous within the meaning of 28 U.S.C. 1915 (e) See Neitzke v. Williams, 490 U.S. 319 (1989). Aside from the alleged statements made by her co-workers concerning retirement, Hutcherson has produced no evidence to show that she was treated differently because of her age. See Thomas v. Sears, Roebuck & Co., 144 F. 3d 31, 33 (1st cir 1998) (stray comments are insufficient to meet the plaintiff's burden in an ADEA case"); Cone v. Longmont United Hospital Association, 14 F. 3d 526,530 (10th cir. 1994) (age-related comments by non-decision makers are not material in showing the hospital's action was based on age discrimination.")

A TRUE COPY
Carolyn Clark Campbell
By: "s/_____".

FOR THE COURT
Carolyn Clark Campbell Clerk
By: "s/_____".

DEPUTY CLERK

Issued as Mandate: 4/9/99

April - 9
INDIV PRO SE
SUBMTD CLOSED
PNl QO2 2

Proceedings include all events.
98-9404 Hutcherson v. The City of New York, etc.al

Blanche Hutcherson
Plaintiff - Appellant

Blanche Hutcherson
212-691-4210
COR LD NTC
341 West 24th St.

Appendix A

	Apt. #4H New York, NY 10011
THE CITY OF NEW YORK Defendant Appellee	Jeffrey D. Friedlander, Esq 212-788-1065 (COR LD NTC ret] Corporation Counsel's
Office	100 Church Street New York, NY 10007
NEW YORK CITY DEPARTMENT OF HUMAN RESOURCES Defendant - Appellee	Jeffrey D. Friedlander, Esq (See above) [COR LD NTC ret]

Docket as of April 9,1999 1:22 pm Page 2

INDIV PROSE
SUBMTD CLOSED
PNL Q02 2

Proceedings include all events.
98-9404 Hutcherson v. The City of New York, et al

Official Caption 1/
Docket No. [S]: 98-9404

Appendix A

BLANCHE HUTCHERSON,
Plaintiff - Appellant,

THE CITY OF YORK, NEW YORK CITY
DEPARTMENT OF HUMAN RESOURCES,

Defendants-Appellees.

Authorized Abbreviated Caption 2/

Docket No. [s] 98-9404
HUTCHERSON V. THE CITY OF NEW YORK

Fed. R. App. P. Rule 12 [a] and 32 [a].
For use on correspondence and motions only.

Defendant - Appellee

Docket as of April 9, 1999 1:22 pm Page 3

Appendix A

INDIV PROSE
SUBMTD

CLOSED

PNL Q02 2

Proceedings include all events. 98-Q404
Hutcherson v. The City of New York, et al.

10/26/98	Copy of notice of appeal and district court docket entries on behalf of Appellant Blanche Hutcherson filed [98-9404] (ps35)
10/26/98	Note: This appeal was PRO SE when filed (ps 35)
10/26/98	District court opinion dated September 24, 1998, endorsed by the Honorable Miriam Goldman Cedarbaum, filed. (ps35)
10/26/98	Copy of district court judgment, dated September 29, 1998, endorsed by the Deputy Clerk, filed. (ps35)
10/26/98	Copy of receipt re: repayment of docketing fee filed on behalf of Appellant Blanche Hutcherson receipt #: E327684. [98-9404] (ps35)
10/26/98	Record on appeal filed. (Original papers of district court.) Number of volumes: 2 (ps35)
11/9/98	Scheduling order #1 filed. Appellant's brief and appendix due on12/9/98. Appellee's brief on 1/11/99. Argument as early as week of 2/22/99. (am)

Appendix 4A

11/9/98	Notice to counsel and pro se: Scheduling Order #1 filed 11/9/98. (am)
11/9/98	Appellant Blanche Hutcherson motion for assignment of counsel pro bono FILED (w/pfs) [1288289-1] (ps35)
12/8/98	Appellant Blanche Hutcherson brief RECEIVED. Problem: pending motion for the assignment of counsel. (em)
12/8/99	Appellant, Blanche Hutcherson appendix received. Problem: pending motion for assignment of counsel.
(em)	
4/9/99	Order FILED DENYING motion for assignment of counsel pro bono [1288289-1] by Appellant Blanche Hutcherson, endorsed on motion dated 11/9/98. "A motion having been made here in by appellant pro se for assignment of counsel, upon consideration thereof, it is ordered that said motion be and it hereby is denied, and the appeal is dismissed as so indisputably lacking in merit as frivolous within the meaning of 28 U.S.C. 1915 (e). See Neitzke v. Williams, 490 U.S. 319 (1989). Aside from the alleged statements made by her co-workers concerning retirement, Hutcherson has produced no evidence to show that she was treated differently because of her age. See Thomas v. Sears, Roebuck & Co., 144 F. 3d 31, 33 (1st Cir. 1998) ("stray comments are insufficient to meet the plaintiff's burden. In an ADBA case"): Cone v. Longmont United Hospital Association, 14F. 3d 526, 530 (10th Cir. 1994) ("age-related comments by non-decison makers are not material in showing the hospital's action was based on age discrimination"). (Before: JON, PNL, SS) (ps35)

INDIV PROSE
SUBMTD CLOSED
PNL Q02 2

Proceedings include all events.
98-9404 Hutcherson v. The City of New York, et al

4/9/99	This appeal [98-9404] is -disposed by the order dated April 9, 1999. (ps35)
4/9/99	Certified copy of order dated 4/9/99 disposing of the appeal issued to District court. (ps35)
4/9/99	Notice to counsel and pro se re: order dated April 9, 1999. (ps35)

APPENDIX B - OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEWYORK FILED SEPTEMBER 24, 1998

UNITED STATES DISTRICT COUT
FOR THE DISTRCIT OF NEW YORK

Hon. Miriam Goldman Cedarbaum

Civil Action No 95 Civ. 10074

BLANCHE HUTCHERSON,

Plaintiff,

v.

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF HUMAN RESOURCES,

Defendant.

ORDER

For the foregoing reasons, defendant's motion for summary judgment is granted.

IT IS THIS 24th day of September, 1998:

SO ORDERED

MIRIAM GOLDMAN CEDARBAUM, U.S.D.J.

Appendix B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKx

BLANCHE HUTCHERSON,

Plaintiff, **95 CIVIL 10074 (MGC)**

-against-

JUDGMENT

THE CITY OF NEW YORK, NYC
DEPT. OF HUMAN RESOURCES,

Defendant.

_____x

Defendant having moved for summary judgement and the matter having been come before the Honorable Miriam Goldman Cedarbaum, United States District Judge, and the Court on September 24, 1998 having rendered its Opinion (81286) granting defendant's motion for summary judgment, it is,

ORDERED, ADJUDGED AND DECREED: That defendant's motion for summary judgment is hereby granted for the reasons stated in the Court's Opinion (81286) dated September 24, 1998

Dated: New York, New York
September 29, 1998

JAMES M. PARKISON

_____
Clerk of Court

Sept 29 1998 3PM

BY:
"s/_____".
Deputy Clerk

THIS DOCUMENT WAS ENTERED ON THE DOCKET ON 9/30/98

Appendix B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK x

BLANCHE HUTCHERSON,

Plaintiff,

95 civ. 10074 (MGC)

-against-

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF HUMAN RESOURCES,

OPINION

Defendant.

---------- x

APPEARANCES:

Blanche Hutcherson
Plaintiff Pro Se
341 West 24th Street, Apt. 4H
New York, New York 10011

PAUL A. CROTTY
Corporation Counsel of the City of New York
JEFFREY D. FRIEDLANDER
Acting Corporation Counsel of the City of New York
Attorney for Defendant
100 Church Street
New York, New York 10007

By: James A. Grillo, Esq.
Assistant Corporation Counsel

Appendix B

CEDARBAUM. J.

This is an action under the Age Discrimination in Employment Act. ("ADEA"), 29 U.S.C. 621 et seq. Defendant moves for summary judgment. For the reasons discussed below, the motion is granted.

FACTS

The following facts are undisputed. Plaintiff was born on May 29, 1936. She was employed by the New York City Human Resources Administration ("HRA") from 1962 to 1992. Starting in December of 1990, she was employed at the Yorkville Income Support Center (the "Yorkville Center"). Plaintiff's immediate supervisor during the first half of 1991 was Deborah Kellman. After July of 1991, her immediate supervisor was Sally Rodriguez, who was 32 years old. In January of 1992, 53 year old Beverly Moran succedded 47 year old Gale Godwin as Director of the Yorkville Center. Plaintiff was then 55.

In the spring of 1992, Moran began receiving numerous complaints from at least four of plaintiff's subordinates and from plaintiff's two supervisors regarding plaintiff's conduct, management style and attitude. (Moran Decl. ¶¶ 4-5.') The complaints included at least six memoranda from plaintiff's co-workers. (Id.; Def. Ex. G.) Plaintiff contends that she was mistreated and "disrespected" by her subordinates and co-workers as well as by Kellman, and that supervisors Kellman and Rodriquez did nothing to stop the (P1. 56.1 Stat. ¶ 8.) Plaintiff also contends that she was not shown the memoranda of complaint and that they were not discussed with her. (Id. ¶ 9.) In addition, plaintiff states that Moran did not verify the truthfulness of the

---

1 Plaintiff objects to defendant's reliance on the declaration of Beverly Moran in support of its motion for summary judgment on the ground that the discovery period closed before the declaration was executed. A declaration submitted in support of a motion, however, is not "discovery" goverened by the parties' case management schedule. Moreover, Rule 56 specifically permits the parties to submit affidavits (or, under 28 U.S.C. 1746, delcarations) in suport of a motion for summary judgment.

complaints and failed to collect memoranda from plaintiff about plaintiff's subordinates. (Id.¶ 10.) These contentions by plaintiff are accepted as true for purposes of this motion.

In the spring of 1992, Lorraine Darden, Deputy Director and Office Manager at the Yorkville Center, recommended to Moran that disciplinary action be taken with respect to plaintiff. In a June 3, 1992 memorandum in support of this recommendation, Darden cited nine memoranda that had been written by plaintiff's supervisors and subordinates complaining about her allegedly inappropriate, uncooperative and insubordinate behavior, and stated that plaintiff's behavior and not improved despite meetings between Darden and plaintiff. (Moran Decl. ¶ 5: Def. Ex. F.) Moran met with plaintiff to discuss her conduct toward her co-workers. (Moran Decl. ¶6.) According to plaintiff, Kellman was present at this meeting in Moran's office threat-to "beat her up." Moran did not reprimand Kellman. (P1. 56.1 Stat. ¶16.) Moran forwarded a disciplinary packet regarding plaintiff to HRA's employee discipline unit after plaintiff, according to Moran, refused to improve her conduct and to act professionally toward her co-workers. (Moran Dep. at 20[2]: Moran Decl. ¶6: Def. G.) Moran told HRA's Employee discipline unit that plaintiff was behaving in an unprofessional, uncooperative, hostile and intimidating manner toward various supervisors, subordinates and other co-worker.(Def. Ex. G.) Moran did not recommend any specific penalty, and did not request that plaintiff be suspended or terminated. (Id.; Moran Decl.¶ 7.)

In October of 1992, plaintiff was served with disciplinary charges and specifications issued by HRA's Employment Law Division, Office of Legal Affairs. Plaintiff was charged with insubordination, misconduct and conduct unbecoming an HRA emnloyee. Plaintiff attended an informal disciplinary conference on October 29, 1992 along

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2 Plaintiff alleges that defendant altered parts of the deposition testimony of several Yorkville Center employees as well as the questions that plaintiff asked at those depositions, a charge which defendant denies. It is undisputed that plaintiff and her witness, Hassan Abdul-Hamid, have made extensive "corrections" to their depositions, however, are not material, and the parties, dispute in this regard does not affect the resolution of ths motion.

with her union representitive. On December 2, 1992, the Disciplinary Specialist found plaintiff guilty of all timely charges and assessed plaintiff a penalty of five days pay. Plaintiff initiated an appeal pursuant to the collective barganing agreement between her union and New York City, but later abandoned the appeal. Plaintiff retired at the end of 1992. Moran did not order, urge or suggest that plaintiff retire, and only learned that plaintiff had applied to retire when she was informed of this fact by HRA'S personnel office. (Moran Decl. 12.)

Plaintiff contends that the disciplinary charges were based on false statements made by other employees. She also contends that she complained to Moran about the abusive and disrespectful behavior of other employees and that Moran failed to reprimand them. In addition, plaintiff states that Moran never advised plaintiff that she was sending a disciplinary packet to HRA's employee discipline unit. Plaintiff sets out a litany of other complaints regarding her employment, both at the Yorkville Center and at other HRA locations. Plaintiff claims that Moran and her supervisors and subordinates were uncooperative, abusive and disrespectful towars her. Specifically, plaintiff presents evidence that other Yorkville Center employees (including her supervisors) yelled loudly at times, and that certain coworkers verbally abused her and threatened her with physical injury on many occasions and suggested at times that she retire. On one occasion according to plaintiff, a subordinate threatened to "knock out" plaintiff's false teeth. Plaintiff also asserts that another subordinate approached her on the day that she received the disciplinary charges from Moran and told her "You can always retire." She also presents evidence that on one occasion a co-worker stabbed case record's on plaintiff's, desk with a knife, that a co-worker, wrongfully moved her personal property, and that Moran permitted all unit supervisors except plaintiff to take off from work on Good Friday, in 1992. Finally, plaintiff states that a number of the employees who engaged in the foregoing conduct frequently socialized with Moran, and plaintiff's supervisors while at work.

DISCUSSION

Summary judgment is authorized when "the pleadings,

depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law" Fed.R. Civ P.56(c): see Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In examining the record, the court must reslove all abiguities and draw all reasonable inferences aginst the moving party. Schwapp v. Town of Avon, 118 F.3d 106, 110 (2d Cir. 1997): see Celotex, 477 U.S. at 330 n.2. The judge's role in summary judgment is not "to weigh the evidence and determine the truth of the matter but to determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. at 242, 249 (1986). To defeat a motion for summary judgment, the party with the burden of proof must make a showing sufficient to establish the existence of every element essential to that party's claim. Celotex, 477 U.S. at 322.

The ADEA makes it unlawful for an employer to "discriminate against any individual with respect to his compensation, term, conditions, or privileges of employment, because of such individual's age." 29 U.S.C. 623 (a) (1). In order to establish a prima facie case of age discrimination, plaintiff must proffer sufficient evidence to support a findling that (1) she is in the protected age group: (2) she was qualified for the job; (3) she suffered some detrimental employment change: and (4) the act complained of occurred under circumstances which give rise to an inference of age discrimination. See Norton v. Sam's Club, 145 F.3d 114, 118 (2d Cir. 1998): David v. Apfel, Levy, Zlotnick & Co., 1993 WL 245521, at *5 (S.D.N.Y. June 25, 1993).

Defendant argues that plaintiff has failed to establish age discrimination with respect to the disciplinary charges and threats of terminatin because the acts of which she complains did not occur under circumstances which give rise to an inference of age discrimination. Plaintiff claims that defendant discriminated against her because of her age by falsely bringing her up on disciplinary charges and threatening her with termination. However, even if plaintiff could make out a prima facie case of age discrimination defendant has articulated a legitimate, non-discriminatory reason for bringing plaintiff up on disciplinary

charges and threatening her with termination.[3] Defendant has produced evidence that Moran received numerous complaints from other employees regarding plaintiff's workplace demeanor which, according to defendant led Moran to report plaintiff to HRA's employee discipline unit and to tell plaintff that she might be suspended or terminated if she did not act more appropriately. If credited by the finder of fact, this explanation would support a determination that defendant was not motivated by Plaintiff's age in referring her for disciplinary proceedings and in threatening her with termination. The burden is on plaintiff to present facts showing that defendant's justification is pretex for age discrimination.

While plaintiff paints a scene of constant strife and ongoing interpersonal conflict at the Yorkville Center, she offers essentially no evidence to show that age discrimination played a roly in her employment troubles. She does not point to any statement or act at the Yorkville Center tht shows that age played a role in the decision to charge her with disciplinary violations and threaten her with termination. Isolated statements by plaintiff's subordinates concerning retirement cannot be attributed to defendant. See Kotlowski v. Eastman Kodak Co., 922 F. Supp. 790, 801 (W.D.N.Y. 1996) (stray comments by co-workers without supervisory control over plaintiff do not rebut defendant's stated nondiscriminatory reason for terminating plaintiff).

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3 The only purpose served by the prima facie showing is to force the defendant to articulate a non-discriminatory reason for its actions. Accordingly, it often is simpler and more straightforward to move directly to the ultimate question of whether a rational fact-finder could conclude that age was a motivating factor for defendant's actions with respect to plaintiff. See Lanahan v. Mutual Life Ins. Co. of New York, F. Supp. 2d ____, _____, 1998 WL 433785, at *2 (S.D.N.Y. July 29, 1998); Lapsley v. Columbia Univ., College of Physicians and Surgeons, 999 F. Supp. 506, 514-15 S.D.N.Y. 1998). Plaintiff cannot survive summary judgment merely by creating an issue of fact as to whether defendant's justification is pretextual. Plaintiff must offer evidence from which a fact finder could infer that defendant actually was motivated at least in part by age discriminatin. Grady v. Affiliated Central, Inc., 130 F.3d 553, 561 (2d cir. 1997), pet. for cert. filed, July 20, 1998 (No. 98-5608); Fisher v. Vassar College, 114 F.3d 1332, 1346-47 (2d Cir. 1997), cert. denied, _____U.S. _____, 118 S. Ct. 851 (1998). Plaintiff has proffered no such evidence.

there is no evidence that these alleged statements were a factor in management's decision to refer plaintiff for disciplinary sanctions or to threaten her with termination if her behavior did not improve. Taken as a whole, and drawing all inferences in plaintiff's favor, plaintiff's proffered evidence in insufficient to permit a jury to find that plaintiff was charged with disciplinary violations and treatened with termination because of her age.

Even if her claim is construed as one for a hostile work environment, plaintiff cannot show that she experienced hosility because of [her] age." 29 U.S.C. 5 623 (a) (1). Assuming that plaintiff's co-workers abused her and subjected her to a hostile work enivironment, there is no evidence that age played a part in her co-worker's treatment of her. The isolated references to retirement that were allegedly made by plaintiff's subordinates do not permit a jury to conclude that plaintiff was subjected to a hostile work environment on the basis of age. Plaintiff does not allege that any of her supervisors at the Yorkville Center ever mentioned age, either hers or anyone else's. She does not contend that she ever told Moran or anyone else at the Yorkville Center that she believed that she was being harassed or discriminated against because of her a ge. Moreover, without evidence that age played a role in her treatment, there is no evidence that plaintiff's supervisors knew or should have known that anyone was hostile to plaintif because of her age. See Burlington Indus., Inc. v. Ellerth, ____, U.S. ____, ____, 118 S. Ct. 2257, 2267 (1998) (employer may be liable for harrassment by a plaintiff's co-workers "if it knew or should have known about the conduct and failed to stop it") : see also Perry v. Ethan Allen, Inc., 115 F.3d 143, 153 (2d Cir. 1997) : Murray v. New York University College of Dentistry, 57 F 3d 243, 249 (2d Cir. 1995). Accordingly, there is no basis to hold defendant liable under the ADEA for the hostility to plaintiff at the Yorkville Center.

Appendix B

CONCLUSION

For the foregoing reasons, defendant's motion for summary judgment is granted.

SO ORERED.

Dated: New York, New York
September 24, 1998

"s/_____".
MIRIAM GOLDMAN CEDARBAUM

APPENDIX C- MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW YORK FILED AUGUST 14, 1996

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW YORK

Hon. Miriam Goldman Cedarbaum

Civil Action No. 95 Civ. 10074

BLANCHE HUTCHERSON,

Plaintiff,

v.

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF HUMAN RESAURES

Defendant.

OPINION

For, the foregoing reasons, the city's motion to dismiss the complaint is granted in part and denied in part.

IT IS THIS 14th day of August, 1996;

SO ORDERED

MIRIAM GOLDMAN CEDARBAUM U.S.D.I.

Appendix C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Blanche Hutcherson,

Plaintiff,

-against-

The City of New York, New York City Department of Human Resources,

Defendant.

MEMORANDUM. OPINION AND ORDER
95 Civ. 10074 (MGC)

APPEARANCES:

Blanche Hutcherson
Plaintiff Pro Se
341 West 24th Street
New York, New York 10011

Paul A. Crotty
Corporation Counsel of the
City of New York
Attorney for Defendant
100 Church Street
New York, New York 10007

By: James A. Girillo
Assistant Corporation Counsel

Appendix C

CEDARBAUM, J.

Blanche Hutcherson asserts claims against the City of New York. Her former employer under the Age Discrimination in Employment Act ("ADEA"), 2 U.S.C. 621-634 (1994), for discrimination and,retaliation, and under Title VII of the Civil Rights Act of 1994, 42 U.S.C. S 20OOe-17 (1994), for discrimination 'and retaliation. The City has moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b) (1) for lack of subiect matter jurisdiction because Hutcherson's claims were not included in or reasonably' related to the claims asserted in the charge she filed with the Equal Employment Opportunity Commission ("EEOC") For the reasons that follow, the Citys motion is granted in part and denied in part.

Background

Hutcherson was employed by the New York Human Resources Administration ("HRA") from April 16, 1962 through December 31, 1992. (Am.Compl.¶ 8.) On November 16,1992, Hutcherson filed a charge with-the EEOC and the New York State Division of Human Rights ("NYSDHR'), alleging that she had been discriminated against because of her age. In her EEOC charge Hutcherson alleged:

1. I am fifty-six years of age. (dob. 5/29/36)

2. I have been working with the [City] since April 16, 1962. My Present title is Supervisor. My time, attendence and work performance have always been satisfactory.

3. On October, 19, 1992" I was unjustly brought up on charges by Beverly Moran, Director, late 40's, for untrue incidents that occurred before Ms. Moran started her employ [with the City].

4. On Nobember 5, 1992 and on November 9, 1992 I wrote up two employees who were under my supervision for

insubordination and was threatened by Ms. Moran. She informed me that if another employee walks into her office to complain about me, I could lose my job and my pension or could be supended without pay.

5. On November 13, 1992, 1 was given a threatening memorandum by Ms. Moran because I wrote up two employees under my supervision for insubordination. Marie Martinez, ES III, and Mona Clark., ES III also suggested that I retire. These two individuals are all younger than I.

(EEOC Charge ¶¶ 1-5)

In an order dated June 22, 1995, the NYSDHR found that Hutcherson failed to establish that the disciplinary charges and harassment that she alleged were in any way related to her age and that Hutcherson had not suffered any damages because she retired before resolution of the disciplinary charge (NYSDHR Determination and Order.) In a letter (dated August 21, 1995, the EEOC informed Hutcherson that after reviewing the findings of the NYSDHR, it had concluded that the evidence did not establish that the city, had violated the ADEA. (EEOC Right to Sue Letter.) Hutcherson received this letter on August 23, 1995. (Am. Compl.¶12.)

Hutcherson filed a complaint with the Pro Se office of this Court on November 8, 1995. The complaint alleges that Hutcherson was denied promotions from 1981 through the time she left her employment with the City in December 1992. (Id.¶ 5,8.) Between 1987 and 1991, younger co-workers with less experience were promoted. (Id.). Attached to the complaint is a copy of Hutcherson's EEOC charge.

Hutcherson also alleges that, in June 1987, male co-worker whistled at her and another used vulgar language in her presence. In October 1987, two male co-workers held up a twenty dollar bill and told Hutcherson that she was only worth twenty dollars. In December 1987, a male co-worker tried to push-his way into the ladies' bathroom as Hutcherson was exiting. (Mem. Opp' n of 4/20/96, Exh. 10 at 3.)

Appendix C

Hutcherson contacted HRA's Office of Equal Employment Opportunity in 1987 and 1989 concerning her age and sex discrimination claims. Hutcherson alleges that she was harassed as a result. (Mem. Opp'n of 5/9/96 at 4.) The complaint alleges that in March 1989 Hutcherson was found guilty of disciplinary charges that were fabricated by a co-worker. (Am. Compl.¶ 8; Mem. Opp's of 4/20/96, Exh 12.) In 1989 and 1990 Hutcherson became sick and missed three days of work because co-workers smoked in her cubicle against her wishes. In 1991, a co-worker, stuck an eight-inch knife into the files on her desk. In 1992, the majority of employees in Hutcherson's department were allowed to take off Good Friday, while Hutcherson was not permitted to do so. (Am Comp¶.1 8.) The complaint also alleges that Hutcherson's co-workers threatened to beat her up, opened her personal-mail and rummaged through her desk. (Id.)

Discussion

Because Hutcherson proceeds pro se, her complaint and supporting papers must be read liberally and interpreted to raise the strongest arguments that they suggest. Seto v. Walker, 44 F.3d 169, 173 (2d Cir. 1995); see also Haines v. Kerner, 404 U.S.519, 520, 30 L. Ed. 2d 652,654 (1972) (per curiam) (pro se complaints held to less stringent standards than pleadings drafted by lawyers).

A district court only has jurisdiction to hear Title VII and ADEA claims that either are included in an EEOC charge or are based on conduct subsequent to the EEOC charge which is "reasonably related" to that alleged in the EEOC charge. Butts v. City of New York Dep't of Housing Preservation and Dev. 990F.2d 1397, 1401 (2d C-4 "Cir. 1993 Title VII; Miller v. International Tel. and Tel. Corp. 755 F. 2d 20, 23-24 (2nd Cir); cert. denied, 474 U.S. 851, 88 L. Ed. 2d 122 (1985) (ADEA). "The purpose of the notice provision, which is to encourage settlement of discrimination disputes, through conciliation and voluntary compliance, would be defeated if a complainant could litigate a claim not previously presented to and investigate by the EEOC Miller, 755 F.2d at 26. Claims not raised in an EEOC charge maybe

brought in a civil action where the conduct complained of would fall within the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination. Butts, 990 F.2d at 1402; Miller, 755 F.2d at 23- 24.

In her EE0C charge, Hutcherson alleges that in October and November 1992 she was unjustly brought up on charges, threatened with termination, and told she should retire. Because Hutcherson proceeds pro se and because the EEOC charge was attached to the complaint, these allegations are assumed to be included in the complaint. Hutcherson also submitted further documentation regarding these allegations to this motion. (Mem.Opp's of 4/20/96, Exh. 13-14.) 'There is subject matter jurisdiction over Hutcherson's age discrimination claim in as much as it is based on the conduct alleged in her EEOC charge.

However, there is nothing in Hutcherson's EEOC charge concerning, her promotion, sex discrimination or retaliation claims, all of which are based on conduct that allegedly occurrecd before Hutcherson file her EEOC charge. Nor would Hutcherson's promotion claim for the post November 1992 period fall within the scope of the EEOC investigation which could reasonably be expected to have grown out of her age discrimination charges.Therefore, these claims are dismissed for lack of subject matter jurisdiction.

Conclusion

For the foregoing reasons, the City's motion to dismiss the complaint, is granted in part and denied in part.

SO ORDERED

Dated: New York, New York
August 14, 1996

"s/_____".
MIRIAM GOLDMAN CEDARBAUM
United States District Judge